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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,483	04/19/2001	Hiroyuki Oka	K-1973	9920

7590 01/28/2004

KANESAKA AND TAKEUCHI
1423 Powhatan Street
Alexandria, VA 22314

EXAMINER

KING, BRADLEY T

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,483

Applicant(s)

OKA ET AL.

Examiner

Bradley T King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) 4-8,12,19 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9-11,13-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 9-11, 13-18, 20, and 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "to become substantially same in a braking actuation even in different braking conditions by the service braking system and the regenerative braking system". The meaning of this limitation is not clear. It is also unclear what constitutes "different braking conditions".

Claim 1 recites "a controller for operating the pump by development of the master cylinder pressure". It is not clear how the controller controls the pump by development of master cylinder pressure.

Claim 15 has been amended to recite "the wheel the".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 9-11, 13-15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukasawa et al (US#6231134) in view of Seibert et al (US#4730877).

Fukasawa et al disclose a braking system including; a master cylinder 68 having an input shaft which travels according to travel of a brake operational member 76 by the braking operation, a master cylinder pressure chamber (72-74), and a master cylinder piston which develops master cylinder pressure in the master cylinder pressure chamber according to a travel of the input shaft (the structure is inherent to master cylinders), a brake force control device 46 having a pump 85 controlling, in a service braking operation, a discharge pressure of the pump according to the operational conditions of the service braking system and the regenerative braking system, a controller for operating the pump by development of the master cylinder pressure, a wheel cylinder receiving the discharge pressure of the pump controlled by the braking force control device and generating a braking force, and a travel modulating device 228 which modulates the travel of the brake operational member. Fukasawa et al lack the control of the travel modulator by the discharge pressure of the pump, instead showing one with a biasing spring. Seibert et al disclose a similar braking system and further teach a travel modulating device 37 controlled by the discharge pressure of a pump to control the operational characteristics of the modulator. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the travel modulator taught by Seibert et al in the system of Fukasawa et al to reduce the size and

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manufacturing efforts (see column 1, lines 60-65 of Siebert et al) and provide a degree of adjustability of the travel characteristics of the master cylinder (column 2, lines 17-22), increasing driver comfort.

Regarding claims 10-11, Siebert et al disclose a modulating piston 38 having different diameter piston portions.

Regarding claim 13, Siebert et al disclose biasing means 39.

Regarding claim 14, Siebert et al disclose metal seals (interpreted in light of the instant disclosure) on both piston portions.

Response to Arguments

Applicant's arguments filed 11/10/03 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Siebert et al disclose a travel simulator with the recited structure. It is maintained that Fukasawa et al modified as taught by Siebert will provide the same travel in a braking action even in different braking conditions as broadly recited by the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T King whose telephone number is (703) 308-8346. The examiner can normally be reached on 11:00-7:30 M-F.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

BTK


ROBERT A. SICONOLFI
PATENT EXAMINER 1/26/04